

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CISCO SYSTEMS, INC. and SCIENTIFIC-	)	
ATLANTA, INC., ARRIS GROUP, INC.,	)	
and THOMSON, INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 07-671 (SLR)
	)	
GPNE CORP.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiffs CISCO SYSTEMS, INC., SCIENTIFIC-ATLANTA, INC., ARRIS GROUP, INC. and THOMSON, INC. (collectively, "Plaintiffs"), through their undersigned counsel, file this Amended Complaint against defendant GPNE CORP. ("GPNE") and seek declaratory relief with respect to U.S. Patent Nos. 6,282,406 (the "'2,406 Patent"); 7,200,406 (the "'0,406 Patent"); and 7,209,748 (the "'748 Patent") (collectively referred to as the "Patents-in-Suit"). In support of their Amended Complaint for Declaratory Judgment, Plaintiffs allege as follows:

**The Parties**

1. Cisco Systems, Inc. ("Cisco") is a California corporation with its principal place of business at 170 West Tasman Drive, San Jose, California 95134.
2. Scientific-Atlanta, Inc. ("SA") is a wholly-owned subsidiary of Cisco. SA is a Georgia corporation with its principal place of business at 5030 Sugarloaf Parkway, Lawrenceville, Georgia 30044-2869.
3. ARRIS Group, Inc. ("ARRIS") is a Delaware corporation with its principal place of business at 3871 Lakefield Drive, Suwanee, Georgia 30024.

4. Thomson, Inc. (“Thomson”) is a Delaware corporation with its principal place of business at 101 W. 103rd Street, Indianapolis Indiana, 46290.

5. GPNE is a Delaware corporation. GPNE has the following registered agent in this judicial district: Corporation Services Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. Upon information and belief, GPNE has its principal place of business at 2556 Lemon Road, Unit B101, Honolulu, Hawaii 96815.

6. GPNE purports to be the owner of each of the Patents-in-Suit, copies of which are attached hereto as Exhibits A-C.

### **Jurisdiction and Venue**

7. This is an action for declaratory relief regarding United States patents.

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that it involves claims arising under the United States Patent Act, 35 U.S.C. § 1 *et seq.*

9. This Court may declare the rights and other legal relations of the parties pursuant to 28 U.S.C. §§ 2201 and 2202 because there is a case of actual controversy within the Court’s jurisdiction.

10. This Court has personal jurisdiction over GPNE because, *inter alia*, GPNE is incorporated in this judicial district and has a registered agent in this judicial district.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

**The Presence Of An Actual Controversy**

12. Cisco, SA, ARRIS and Thomson market, sell and offer to sell DOCSIS compliant cable modems to companies that own and operate cable systems. Purchasers of such DOCSIS compliant cable modems include Time Warner Cable Inc. ("TWC"), Comcast Cable Communications, LLC ("Comcast") and Charter Communications, Inc. ("Charter").

13. GPNE has asserted rights under the '2,406 Patent based on certain identified ongoing activity of Plaintiffs' customers.

14. GPNE has recently dismissed without prejudice an action alleging that each of TWC, Comcast and Charter infringe the '2,406 Patent by, *inter alia*, using and selling DOCSIS compliant cable modems. GPNE filed an amended complaint in that action and alleged that, "on information and belief," each of TWC, Comcast and Charter, "manufactures, uses, and sells products that infringe at least claim 1 of the '406 patent, including for example and without limitation all DOCSIS certified cable modems ...."

15. In the course of that action, GPNE served infringement contentions specifically alleging that DOCSIS compliant cable modems used by TWC infringe the '2,406 Patent. GPNE's infringement contentions identified as "Accused Products" specific models of DOCSIS compliant cable modems, as well as "any other cable modems or other devices acting or capable of acting under the DOCSIC [sic] standard, or in the manner described and claimed in the '406 patent, as infringing the '406 patent."

16. Accordingly, GPNE has accused Plaintiffs' DOCSIS compliant cable modems of infringing the '2,406 Patent.

17. GPNE has also informed Cisco and SA that the DOCSIS compliant cable modems necessarily infringe the '2,406 Patent.

18. GPNE has also informed Cisco, SA and ARRIS that it is considering enforcing the '0,406 Patent and the '748 Patent against the DOCSIS compliant cable modems manufactured and sold by them.

19. GPNE has specifically informed Cisco, SA and ARRIS that payment of a substantial fee to GPNE can eliminate their exposure to GPNE's claims of infringement under the Patents-in-Suit with respect to DOCSIS compliant cable modems.

20. In the course of its litigation activities, GPNE sought damages and other relief against TWC, Comcast and Charter stemming from their use of DOCSIS compliant cable modems.

21. Plaintiffs believe DOCSIS compliant cable modems do not infringe any valid claim of the Patents-in-Suit, and further believe that they should be free to make, use, sell offer to sell and/or import DOCSIS compliant cable modems without taking a license from or paying fees to GPNE.

22. GPNE's threats and its litigation conduct place Plaintiffs under reasonable apprehension of suit.

23. Based on the foregoing, an actual and justiciable controversy exists between Plaintiffs and GPNE with respect to the infringement and validity of the Patents-in-Suit.

**Count I: Declaration of Rights Regarding  
U.S. Patent No. 6,282,406 (the "2,406 Patent")**

24. Plaintiffs restate and incorporate by reference each of the allegations of paragraphs 1-17 above.

25. GPNE claims to be the owner of all legal rights, title and interests in the '2,406 Patent, including the right to enforce the '2,406 Patent.

26. Plaintiffs have not and do not infringe – directly, contributorily, or by inducement – any valid claim of the `2,406 Patent.

27. Plaintiffs seek and are entitled to a declaration of non-infringement of the `2,406 Patent and/or invalidity of the `2,406 Patent pursuant to Title 35 of the United States Code.

**Count II: Declaration of Rights Regarding  
U.S. Patent No. 7,200,406 (the “`0,406 Patent”)**

28. Plaintiffs restate and incorporate by reference each of the allegations of paragraphs 1-21 above.

29. GPNE claims to be the owner of all legal rights, title and interests in the `0,406 Patent, including the right to enforce the `0,406 Patent.

30. The `0,406 Patent is a continuation of, *inter alia*, the `2,406 Patent.

31. Plaintiffs have not and do not infringe – directly, contributorily, or by inducement - any valid claim of the `0,406 Patent.

32. Plaintiffs seek and are entitled to a declaration of non-infringement of the `0,406 Patent and/or invalidity of the `0,406 Patent pursuant to Title 35 of the United States Code.

**Count III: Declaration of Rights Regarding  
U.S. Patent No. 7,209,748 the (“`784 Patent”)**

33. Plaintiffs restate and incorporate by reference each of the allegations of paragraphs 1-26 above.

34. GPNE claims to be the owner of all legal rights, title and interests in the `748 Patent, including the right to enforce the `748 Patent.

35. The `748 Patent is a continuation of *inter alia* the `2,406 Patent.

36. Plaintiffs have not and do not infringe - directly, contributorily, or by inducement - any valid claim of the '748 Patent.

37. Plaintiffs seek and are entitled to a declaration of non-infringement of the '748 Patent and/or invalidity of the '748 patent pursuant to title 35 of the United States Code.

**Prayer for Relief**

WHEREFORE, Plaintiffs pray:

- (a) That this Court find and declare that Plaintiffs' DOCSIS compliant cable modems do not infringe and have not infringed, in any manner, the Patents-in-Suit and/or that the Patents-in-Suit are invalid pursuant to Title 35 of the United States Code;
- (b) That this Court award Plaintiffs all of their costs of this action;
- (c) That this Court find that this is an exceptional case and award Plaintiffs their attorneys' fees pursuant to 35 U.S.C. § 285 or otherwise; and
- (d) That this Court grant Plaintiffs such other and further relief as the court deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Karen Jacobs Louden*

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*Cisco Systems, Inc., Scientific-Atlanta, Inc.,*  
*ARRIS Group, Inc. and Thomson, Inc.*

December 4, 2007  
1327987

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on December 4, 2007, copies of the foregoing were caused to be served upon the following in the manner indicated:

**BY HAND**

GPNE Corp.  
c/o Corporation Service Company  
2711 Centerville Road  
Wilmington, DE 19808

*/s/ Karen Jacobs Loudon*

klouden@mnat.com (#2881)